

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 v.  
12 Plaintiff,

13 EDMUND SMITH,  
14 Defendant.

CASE NO. CR17-0207-JCC

ORDER

15 This matter comes before the Court on Defendant Edmund Smith's motion for  
16 compassionate release (Dkt. No. 66) and the Government's motion to seal (Dkt. No. 71). Having  
17 thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument  
18 unnecessary and hereby DENIES Mr. Smith's motion for compassionate release (Dkt. No. 66)  
19 and GRANTS the Government's motion to seal (Dkt. No. 71) for the reasons explained herein.

20 **I. BACKGROUND**

21 In January 2018, Mr. Smith pleaded guilty to possession of child pornography. (Dkt. Nos.  
22 28, 30, 32, 36.) In the plea agreement, he admitted to using P2P file sharing to send and receive  
23 images and videos of minors engaged in sexually explicit conduct. (Dkt. No. 32 at 5.) He  
24 possessed at least 12,000 images and 300 videos of minors, including prepubescent minors and  
25 minors under the age of twelve. (*Id.*) The images and videos included "depictions of sadistic or

1 masochistic displays involving minors, as well as visual depictions of infants/toddlers engaged in  
 2 sexually explicit conduct.” (*Id.* at 5–6.) He also downloaded a file called “How to Practice Child  
 3 Love, a Pedo Guide,” which “teach[es] you in detail[] about how to engage [in] a safe and  
 4 harmless sexual relationship with a child.” (*Id.* at 6.) The Court imposed 72 months of  
 5 incarceration followed by a lifetime term of supervised release. (Dkt. Nos. 55, 56, 60.) At the  
 6 time, Mr. Smith was 75 years old, had documented health problems, and used a wheelchair  
 7 because of problems with his equilibrium. (Dkt. No. 38 at 2, 9–10.) Mr. Smith is has served over  
 8 40 months of his 72-month sentence and is currently incarcerated at FCI Terminal Island. (Dkt.  
 9 No. 68 at 1.)

10 Mr. Smith moves for compassionate release under 18 U.S.C. § 3582(c)(1). FCI Terminal  
 11 Island had a large COVID-19 outbreak in April, and Mr. Smith contracted the virus and was  
 12 hospitalized for four months. (*See generally* Dkt. No. 67.) He has since returned to FCI  
 13 Terminal Island and requires the use of supplemental oxygen. He continues to suffer COPD and  
 14 longstanding vertigo, as well as an umbilical hernia. Mr. Smith argues compassionate release is  
 15 warranted because of his diminished physical health and the risk that he will be reinfected with  
 16 COVID-19, his experience suffering from the virus in prison, and the institution’s inability to  
 17 provide care for him in the future. (*See generally* Dkt. Nos. 66, 73.) The Government opposes  
 18 release arguing that Mr. Smith is capable of self-care in the institution and that reinfection with  
 19 COVID-19 is rare. (Dkt. No. 70 at 8–9.) The Government further argues that even if  
 20 extraordinary and compelling reasons exist, Mr. Smith presents a danger to the community and  
 21 the 18 U.S.C. § 3553(a) factors do not warrant release. (*Id.* at 9–10.)

## 22 II. DISCUSSION

### 23 1. Mr. Smith’s Motion for Compassionate Release

24 A court may reduce a term of imprisonment if “extraordinary and compelling reasons  
 25 warrant such a reduction” and “such a reduction is consistent with applicable policy statements  
 26 issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). The Sentencing

1 Commission's relevant policy statement, in turn, says that a court may reduce a term of  
 2 imprisonment if "the defendant is not a danger to the safety of any other person or to the  
 3 community" and "extraordinary and compelling reasons warrant such a reduction." United States  
 4 Sentencing Guidelines ("USSG") § 1B1.13. The statute also directs a court to consider the 18  
 5 U.S.C. § 3553(a) factors in deciding whether compassionate release is appropriate. 18 U.S.C.  
 6 § 3582(c)(1)(A). Taken together, the policy statement and 18 U.S.C. § 3582(c)(1)(A) establish  
 7 three requirements that must be satisfied before reducing a defendant's sentence: extraordinary  
 8 and compelling reasons must warrant release, a defendant cannot represent a danger to the  
 9 community upon release, and any reduction in the defendant's sentence must be consistent with  
 10 18 U.S.C. § 3553(a).<sup>1</sup> See 18 U.S.C. § 3582(c)(1)(A); USSG § 1B1.13. The defendant bears the  
 11 burden of making this showing. *United States v. Holden*, 452 F. Supp. 3d 964, 969 (D. Or.  
 12 2020).<sup>2</sup>

13 Medical conditions may represent extraordinary and compelling reasons if an inmate  
 14 "suffer[s] from a serious physical or medical condition . . . that substantially diminishes the  
 15 [defendant's] ability . . . to provide self-care within the environment of a correctional facility and  
 16 from which he or she is not expected to recover." 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13

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17 <sup>1</sup> As a threshold matter, a defendant must also demonstrate that he has satisfied the exhaustion  
 18 requirement of 18 U.S.C. § 3582(c)(1)(A). See *United States v. Van Sickle*, 2020 WL 2219496,  
 19 slip op. at 3 (W.D. Wash. 2020). Specifically, a defendant must show that he exhausted  
 20 administrative remedies or waited 30 days after filing a request with the warden before filing the  
 instant motion. *Id.* Mr. Smith has made this showing. (See Dkt. No. 66-1.)

21 <sup>2</sup> The parties disagree about whether, in light of the statutory changes enacted by the First Step  
 Act, USSG 1B1.13 remains an "applicable" policy statement that limits the Court's discretion.  
 (Compare Dkt. No. 66 at 6-7, with Dkt. No. 70 at 5-7.) The Ninth Circuit has not squarely  
 22 addressed the issue, and the Court finds it unnecessary to answer the question in this case. At the  
 very least, the policy statement remains instructive and may help guide the Court's discretion.  
 See, e.g., *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020). And, as discussed more  
 23 fully below, the Court denies Mr. Smith's motion because the 18 U.S.C. § 3553(a) factors weigh  
 24 against release. See *United States v. Ruffin*, 978 F.3d 100 (6th Cir. 2020) (finding it unnecessary  
 25 to decide whether the policy statement remains binding because the district court denied relief  
 26 under a balancing of the sentencing factors in section 3553(a)).

1 cmt. n.1(A). When an inmate has health conditions that make them significantly more vulnerable  
2 to complications from COVID-19, that likewise may constitute an extraordinary and compelling  
3 circumstance. *See United States v. Cosgrove*, 454 F. Supp. 3d 1063, 1067 (W.D. Wash. 2020);  
4 *United States v. Dorsey*, 461 F. Supp. 3d 1062, 1065 (W.D. Wash. 2020). Mr. Smith submits  
5 evidence that his physical health has been diminished by his recent COVID-19 infection; that he  
6 suffers from COPD, a condition identified by the Centers for Disease Control and Prevention as  
7 one that elevates the risk of complications from COVID-19; and that it is possible to be  
8 reinfected with the virus. (*See* Dkt. No. 66-4, 67.) However, because Mr. Smith has failed to  
9 demonstrate he would not represent a danger to the community upon release or that a reduction  
10 in his sentence would be consistent with 18 U.S.C. § 3553(a), the Court need not decide whether  
11 he has established extraordinary and compelling reasons.

12 In assessing whether Mr. Smith would represent a danger to the community upon release,  
13 the Court looks to the nature and circumstances of his underlying offense, the weight of the  
14 evidence against him, his history and characteristics, and the nature of the danger that his release  
15 would pose to any person or the community. 18 U.S.C. § 3142(g); U.S.S.G. § 1B1.13(2). The  
16 nature and circumstances of Mr. Smith's offense were very serious. His offense involved not  
17 only possessing thousands of images and videos, but also downloading a guide to finding,  
18 grooming, and sexually abusing children. The weight of the evidence was strong, as law  
19 enforcement found the images, videos, and documents stored on Mr. Smith's devices and Mr.  
20 Smith admitted to using P2P file sharing to send and receive images and videos of minors  
21 engaged in sexually explicit conduct. In light of Mr. Smith's history, which includes a prior  
22 conviction for sexual contact with his minor daughter, the Court FINDS he would present a  
23 danger to the community upon release.

24 Further, the section 3553(a) factors do not weigh in favor of release. These factors  
25 include the nature and circumstances of the underlying offense, the need for the sentence  
26 imposed, the kinds of sentences available, the applicable sentencing range, pertinent policy

1 statements, and avoidance of sentencing disparities. *See* 18 U.S.C. § 3553(a). Here, releasing Mr.  
2 Smith from confinement early would undermine the goals of sentencing. The nature and  
3 circumstances of the current offense are very serious in light of Mr. Smith's possession of a  
4 guide to grooming children and his prior conviction. Reducing his sentence from 72 months to  
5 just over 40 months would not adequately reflect the seriousness of the offense, nor would it  
6 promote respect for the law, provide adequate deterrence, or sufficiently protect the public.

7 **2. Government's Motion to Seal**

8 The Government moves to maintain under seal a letter from a legal representative for one  
9 of the victims. (Dkt. No. 71.) The Court starts from the position that “[t]here is a strong  
10 presumption of public access to [its] files.” W.D. Wash. Local Civ. R. 5(g)(3); *see also Nixon v.*  
11 *Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). To overcome that presumption, a party  
12 seeking to seal a judicial record must show “compelling reasons” to seal the record if it relates to  
13 a dispositive pleading. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir.  
14 2006). Here, the exhibit contains highly personal and sensitive victim information. (Dkt. No. 72.)  
15 The Court FINDS that there is a compelling interest in maintaining the confidentiality of such  
16 information and that interest outweighs the public’s interest in its disclosure. *See Kamakana*, 447  
17 F.3d at 1179.<sup>3</sup>

18 **III. CONCLUSION**

19 For the foregoing reasons, the Court DENIES Mr. Smith’s motion for compassionate  
20 release (Dkt. No. 66) and GRANTS the Government’s motion to seal (Dkt. No. 71). The Court  
21 respectfully DIRECTS the Clerk to maintain Docket Numbers 67 and 72 under seal.

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24 <sup>3</sup> Mr. Smith filed an exhibit containing his medical records under seal without filing a motion to  
25 seal. Nevertheless, the Court *sua sponte* orders that the exhibit, Docket Number 67, be  
26 maintained under seal. Since the exhibit contains Mr. Smith’s confidential and highly personal  
medical information, the Court FINDS there is a compelling interest in maintaining the  
confidentiality of such records and that interest outweighs the public’s interest in their disclosure.  
*See Kamakana*, 447 F.3d at 1179.

1 DATED this 8th day of January 2021.  
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John C. Coughenour

John C. Coughenour  
UNITED STATES DISTRICT JUDGE

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